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Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker

Background

The Form I-140, Immigrant Petition for Alien Worker, is used to petition U.S. Citizenship and Immigration Services (USCIS) to classify an alien beneficiary as eligible for an immigrant visa based on employment. The employer generally files the Form I-140 on behalf of the alien.

Questions and Answers

Q #1. What steps can I take to ensure that my Form I-140 petition will not be rejected by USCIS? [Answer Finalized on 06/30/09]

A. Be sure to submit your Form I-140 petition with correct information and well-organized supporting documentation or your petition may be rejected or a final decision can be delayed.

Below are tips to ensure that your Form I-140 petition is accepted for processing:

- Use the most current edition of the form, although older editions may be accepted.
- Make sure you follow the instructions carefully in regards to which location to file your Form I-140 petition.
- Select only one visa preference category in Part 2 of the Form I-140. (USCIS will reject the Form I-140 petition if Part 2 is left blank or when more than one visa preference category is selected in Part 2.)
- Respond to all questions and provide information in all of the "answer" and "check" boxes. Please write "none" or "n/a" in an answer box if a question does not apply to you.
- Print or type information using black ink only. Please do not "highlight" or "background shade" your entries.
- Make sure the petitioner signs the Form I-140.
- Include the correct fee specified in the form instructions. If you file the petition with other related applications for the alien beneficiary, attach the fee to the petition by paper clip or staple, and indicate the name of the applicant on the payment document (i.e., in the memo field).
- Submit one check per application. If more than one petition or application is filed using a single check, and any of the forms are found to be improperly filed, ALL forms will be rejected.
- Submit Form G-28, Notice of Appearance as Attorney or Representative, if applicable (with original signatures of both the representative and the applicant or petitioner).
- For petitions that are filed electronically, send the supporting documentation to the address identified in the directions for e-filing. Do not submit any other paper-filed applications or petitions with the supporting documentation for the electronically filed I-140.

Q #2. What if an incorrect visa category is selected in Part 2 of the Form I-140? [Answer Finalized on 06/30/09]

A. When USCIS creates the electronic record for the Form I-140 petition it will issue and mail a Form I-797 Receipt Notice to the petitioner or the Form G-28 representative. The receipt notice will indicate the visa category that the petitioner requested on Part 2 of their Form I-140. Make sure this category is correct. If it is not correct (i.e., in cases where either the petitioner or USCIS has made a clerical error), then immediately request a change in visa classification through the USCIS National Customer Service Center [1-800-375-5283, 1-800-767-1833 (TTY)] prior to the adjudication of the petition.

Although you may request a change of classification prior to adjudication to correct a clerical error in Part 2 of the form, the determination regarding whether to change the visa preference classification will be made by USCIS, based on the totality of the record. Denial of the I-140 based upon ineligibility for the visa preference category will result in denial of the Form I-485, Application to Register Permanent Residence or Adjust Status, if one was filed with the I-140. Requests for a change in visa preference category cannot be granted in petitions that have already been adjudicated. A post-adjudication alteration of the requested visa classification constitutes a material change in the petition and is prohibited.

Q #3. What if the petitioner wants to request consideration of multiple visa categories on behalf of an alien beneficiary? [Answer Finalized on 06/30/09]

A. If you want to classify the alien beneficiary under multiple visa preference categories, file a separate Form I-140 petition, with the required fee and supporting documentation for each requested visa category.

Q #4. What special steps should be taken to file a Form I-140 petition that requires a DOL-approved labor certification? [Answer Finalized on 06/30/09]

A. USCIS reviews Form I-140 petition filings in visa categories that require DOL-approved labor certification to verify that the petition is supported by a valid labor certification. In order to be valid at the time of filing of the Form I-140 petition, the labor certification must be submitted with the Form I-140 during the 180-day validity period annotated at the bottom of every page of the labor certification by DOL. Petitions that are not supported by a valid labor certification will be rejected.

Below are tips to help ensure that your Form I-140 petition that requires a DOL-approved labor certification is accepted for processing:

- Package your Form I-140 with the Form G-28, if any, on top, followed by the form itself. Place the original labor certification directly under the I-140 petition, followed by the other supporting documentation.

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- In instances where the ending date of the labor certification's validity period expires on a Saturday, Sunday or legal holiday, petitions will be accepted with the labor certification on the next business day. Petitions filed with expired labor certifications filed after the next business day will be rejected.
- DOL-approved labor certifications that are filed electronically with DOL must be signed by the employer, the agent/representative, and the alien beneficiary prior to submission with the I-140 petition. Form I-140 petitions will be rejected if filed with unsigned labor certifications. If an I-140 is inadvertently accepted with an unsigned labor certification, the petitioner will be issued a Request for Information (RFE) requesting the required signatures.
- Place a brightly colored piece of paper directly under the Form I-140 petition requesting in large bold font a duplicate labor certification if you need one.
- If the petition that is being filed is an amended petition and the original labor certification has already been submitted with another Form I-140 petition, place a brightly colored piece of paper directly under the petition that indicates in large bold font that the petition is an amended petition and that the labor certification has already been submitted. Also provide the receipt number of the previously filed petition, if available.

Q #5. When filing my Form I-140, how should I organize the evidence with the petition?
[Answer Finalized on 06/30/09]

A. The various categories of evidence provided in support of the petition should be grouped according to the area of eligibility that the category of evidence is seeking to establish.

Follow the tips below for how to organize your evidence:

- Provide all required documentation and evidence with the petition when filed. Form I-140 petitions may be denied without issuing a request for evidence in the instances where the required evidence described in the instructions and regulations are not initially provided.
- If providing photocopies of documents, please provide clear legible copies. (Note: Original DOL-approved labor certifications, signed by the petitioner, alien and representative, if any, must be submitted if they are required by the visa category.)
- All foreign language documents must be submitted with a corresponding English translation. The English translation must be certified by a translator who is competent to translate and must verify in writing that "the translation is true and accurate to the best of the translator's abilities." It is helpful if the English translation is stapled to the foreign language document.
- If the alien beneficiary may be entitled to an earlier priority date based on a previously approved Form I-140 petition, please provide a statement to that affect, along with a copy of the Form I-797 approval notice for the previous petition. (See 8 C.F.R. 204.5(e))
- If documenting the alien's publications or citations of the alien beneficiary's work, please highlight the alien's name in the relevant articles. It is not necessary to send the full copy of a dissertation, thesis, or research paper written by the alien beneficiary, or one in which the alien beneficiary's work has been cited. Include the title page and the portion(s) that cite the alien's work and the "works cited" or bibliography.
- Tab and label the evidentiary exhibits at the bottom of the first page of each exhibit, and provide a list of the evidentiary exhibits and the eligibility criteria that each exhibit is submitted to establish for petitions supported by a substantial amount of documentation. An exhibit that is being provided to meet multiple eligibility criteria should be so identified in the exhibit list.

In the case of:

E11, Alien of Extraordinary Ability petitions (Form I-140, Part 2, option a.)

- Identify which of the ten regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
- Provide a statement and evidence that the alien beneficiary is coming to the U.S. to continue to be employed in his/her area of sustained national or international acclaim. (See 8 C.F.R. 204.5(h).)

E12, Outstanding Professor or Researcher petitions (Form I-140, Part 2, option b.)

- Identify which of the six regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
- Provide evidence that the alien has at least three years of experience in teaching and/or research in the academic field.
- Submit a copy of the petitioner's actual job offer issued to the alien beneficiary. This letter or contract must set forth the title, terms and conditions of the position offered.
- Send documentation as outlined above for each position if the beneficiary has changed positions since s/he was initially hired. (See 8 C.F.R. 204.5(i).)

E13, Multinational Executive or Manager (Form I-140, Part 2, option c.)

- Provide evidence and a cover letter that describes the name of the foreign employer, the position offered in the U.S., the position held abroad and the years of employment as well as the date the beneficiary transferred to the U.S. State the claimed relationship between the foreign employer and the U.S. petitioner, i.e. affiliates, subsidiary, joint venture etc.
- Provide evidence that the U.S. employer has been doing business for at least one year prior to the filing of the petition. (See 8 C.F.R. 204.5(j).)

E21, Alien of Exceptional Ability (Form I-140, Part 2, option d. or i.)

- Identify which of the six regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
- Provide evidence that the alien beneficiary meets the minimum education and experience requirements specified in the supporting labor certification if filing under Form I-140 Part 2, option d. (See 8 C.F.R. 204.5(k)(3).)

E21, Member of the Professions Holding an Advance Degree or an Alien of Exceptional Ability, requesting a National Interest Waiver (Form I-140, Part 2, option i.)

- Identify how the alien qualifies for classification as a member of the professions with an advanced degree (e.g. the alien holds an advanced degree, the alien holds a Bachelor's degree in addition to five years of progressive experience, or the alien qualifies as an alien of exceptional ability).
- Identify each of the three criteria (e.g. intrinsic merit, national scope, and national interest) that must be satisfied and provide the evidence needed to satisfy each criteria. (See 8 C.F.R. 204.5(k) and Matter of New York State Department of Transportation (NYS DOT), 22 I&N Dec. 3363, Int. Dec. 3363 (Act. Assoc. Comm. 1998).

Q #6. How can a petitioner request the withdrawal of a Form I-140 petition? [Answer Finalized on 06/30/09]

A. The petitioner or the Form G-28 representative may send a letter requesting to withdraw the I-140 petition to USCIS (See Question #10 regarding the submission of a petition withdrawal request).

Withdrawal requests should include:

- A statement indicating that the Form I-140 petitioner wishes to withdraw the petition;
- The Form I-140 petition receipt number;
- The name, address and phone number of the petitioner;
- The name of the alien beneficiary;
- The alien registration number of the alien beneficiary, if known;
- The petitioner's signature or the Form G-28 representative.

Q #7. Who is eligible to submit a request to change employers under INA 204(j), which is commonly known as "porting" under INA 204(j)? [Answer Finalized on 12/14/09]

A. An alien beneficiary of a pending or approved Form I-140 petition whose application for adjustment of status (Form I-485) has been filed and remains un-adjudicated for 180 days or more and who seeks to change jobs to a new job that is the same or similar occupational classification may submit a request to "port" under AC21.

Note: Determinations of eligibility for INA §204(j) portability are made within the adjudication of Form I-485 applications and not the adjudication of Form I-140 petitions.

Q #8. How can an alien beneficiary submit a request to change employers under INA 204(j)? [Answer Finalized on 12/14/09]

A. An alien beneficiary may supplement the Form I-485 record of proceeding with documentation relating to the new job offer that forms the basis of the INA §204(j) portability request. The alien beneficiary or the Form G-28 representative for the Form I-485 application must send a letter from the new intended permanent employer specifying the job title and duties of the offered position, the minimum educational or training requirements, the date the alien beneficiary began (or will begin) employment and the offered salary or wage. The letter must be issued and signed by the appropriate authority within the new employer's organization who is authorized to make or confirm an offer of permanent employment. In addition, a copy of the Form I-140 approval notice or receipt notice and a copy of the Form I-485 receipt notice should be provided to locate the alien's beneficiary's case file and to confirm that the application has been pending for at least 180 days.

Q #9. May an alien beneficiary request to "port" to a different employer or job under INA 204(j) if his or her Form I-140 petition is still pending? [Answer Finalized on 12/14/09]

A. Yes, an alien beneficiary may request to change employers under INA 204(j) while the Form I-140 petition is pending, as long as his or her Form I-485 adjustment application has been pending for at least 180 days. However, in order for the Form I-140 petition to "remain valid" for INA §204(j) purposes, it must be determined that the petition was "valid" when filed, i.e., that the I-140 petition was filed on behalf of an alien who was entitled to the employment-based classification and that the petition contained a valid job offer at the time that the petition was filed. Therefore, the petition must be approved prior to a favorable determination regarding a portability request made under INA §204(j).

Guidance on the adjudication of requests to change employers (or jobs) under INA §204(j) was published in USCIS's December 27, 2005 memorandum entitled, *Interim guidance for processing I-140 employment-based immigrant petitions and I-485 and H-1B petitions affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313)*. This memo specifically dealt with how USCIS processes unapproved I-140 petitions that were concurrently filed with I-485 applications in the portability context. If evidence is submitted to USCIS that an alien seeks to adjust on the basis of a new job offer under INA 204(j), then, the adjudicator will first determine if the alien is the beneficiary of an approved I-140 petition. If he or she is not, the adjudicator will proceed to determine whether the unapproved, pending I-140 was **approvable when filed** (this may involve issuance of an RFE if the I-140 cannot be approved without further evidence of its merits). Then, only if the I-140 can be approved, the adjudicator will adjudicate the adjustment of status application and also determine if the new position is the same or similar for I-140 portability purposes.

Q #10. Where do I mail Form I-140 petition withdrawal requests and AC21 106(c) portability requests? [Answer Finalized on 06/30/09]

A. The Texas Service Center (TSC) and the Nebraska Service Center (NSC) have established a dedicated U.S. Post Office Box for the submission of:

- Form I-140 petition withdrawal requests, and;
- AC21 106(c) portability requests.

The use of the Post Office Box addresses is limited to the submission of Form I-140 petition withdrawal requests and AC21 portability requests. The submission of correspondence that is unrelated to this will be sent to the Service Center's General Correspondence Unit.

If the Submission is...	For a...	Then the Submission should be Mailed to...
A Form I-140 Withdrawal Request	Form I-140 Petition that is pending or was approved at the TSC	USCIS Texas Service Center PO Box 851745 Mesquite, TX 75185
	Form I-140 Petition that was approved at the Vermont Service Center (VSC)	
An AC21 106(c) Portability Request	Form I-485 Application that is pending at the TSC	
A Form I-140 Withdrawal Request	Form I-140 Petition that is pending or was approved at the NSC	USCIS Nebraska Service Center P.O. Box 87105 Lincoln, NE 68501-7105
	Form I-140 Petition that was approved at the California Service Center	
An AC21 106(c) Portability Request	Form I-485 Application that is pending at the NSC	

Unrelated to a Form I-140 Withdrawal Request or an AC21 106(c) Request	An address other than the addresses noted above. Please go to the Related Links to determine the correct USCIS mailing address.
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Q #11. How can a successor employer establish a successor-in-interest (SII) relationship with a predecessor employer in order to use that employer's approved labor certification when filing an I-140 petition on behalf of the alien beneficiary named on the labor certification? [Answer Finalized on 12/14/09]

A. On August 6, 2009, USCIS issued a memorandum, entitled "Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions: Adjudicators Field Manual ("AFM") Update to Chapter 22.2(b)(5)" which amended the Adjudicator's Field Manual guidance on factors for making successor-in-interest (SII) determinations in the adjudication of Form I-140, Immigrant Petition for Alien Worker. This memorandum also superseded all previously issued policy guidance on SII relationship determinations for Form I-140 purposes. This updated guidance is intended to allow flexibility in the adjudication of I-140 petitions that present novel, yet substantiated and legitimate SII scenarios.

Per the memo, the following factors noted below will determine whether a valid SII exists:

Three Successor-In-Interest Factors

1. The job opportunity offered by the successor must be the same as the job opportunity originally offered on the labor certification;
2. The successor bears the burden of proof to establish eligibility in all respects, including the provision of required evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage, as of the date of filing of the labor certification with DOL, and;
3. For a valid successor-in-interest relationship to exist between the successor and the predecessor that filed the labor certification, the petitioner must fully describe and document the transfer and assumption of the ownership of the predecessor by the successor.

Question #12. To which I-140 visa classifications does the SII guidance apply? [Answer Finalized on 12/14/09]

A. The SII guidance only applies to I-140 visa classifications that require a job offer, do not have classification-specific eligibility requirements for petitioners, and must be supported by a DOL-approved individual labor certification. Note: The SII guidance does not apply in cases where the Form I-140 petition is the basis for a portability claim under INA 204(j), as no new successor Form I-140 petition is required as part of the INA 204(j) determination.

The following table outlines which visa classifications that the SII guidance applies to.

Class/Subcategory	Does SII Guidance Apply?	If Not, Why?
E11, Alien of Extraordinary Ability	No	The E11 visa classification does not require a job offer.
E12, Outstanding Professor or Researcher	No	The E12 visa classification has classification-specific eligibility requirements for petitioners, i.e. the petitioning employer must be shown to be an institution of higher learning or a private research firm that employs at least 3 full-time researchers. [See 8 CFR 204.5(i).] Also, no individual labor certification is required.
E13, Multinational Manager or Executive	No	The E13 visa classification has classification-specific eligibility requirements for petitioners, i.e. the entity must be "multi-national, and have a qualifying relationship with the foreign entity which employed the alien abroad. [See 8 CFR 204.5(j).] Also, no individual labor certification is required.
E21, Advanced Degree Alien or Alien of Exceptional Ability, with Individual Labor Certification	Yes	N/A
E21, NIW	No	The E21 - NIW visa classification does not require a job offer nor a labor certification.
E21 or "EB3", Schedule A, Group I or II	No	The Schedule A classification subcategories have specific requirements for the job offered by the petitioner which must occur prior to the filing of each petition with USCIS. [See 20 CFR 656.]
E32, Professional	Yes	N/A
E31, Skilled Worker	Yes	N/A
EW3, Other Worker	Yes	N/A

Q #13. Does the SII guidance impact the ability of an alien beneficiary to retain the priority date established in a previously approved Form I-140 petition under 8 CFR 204.5(e)? [Answer Finalized on 12/14/09]

A. Generally, the alien beneficiary in an SII case may retain the priority date of the predecessor's approved Form I-140 petition, if any. Also it is important to note that an alien beneficiary of an approved petition may be able to retain the priority date from the previously approved petition even if an SII relationship is not established by a company as result of an acquisition, merger, etc. However, the resultant company must test the labor market anew through the labor certification process, obtain a DOL-approved labor certification and then file a new Form I-140 petition on the alien beneficiary's behalf. A copy of the approval notice for the previously filed petition, or an annotation on the new petition noting the receipt number of the previously filed petition should be provided if an alien beneficiary seeks to retain the priority date of the prior I-140 petition.

Generally, an alien beneficiary may also retain the priority date established by an approved E12 or E13 petition for subsequent petitions filed in his or her behalf by a new employer in the E12 or E13 categories.

Q #14. Is the SII analysis adversely impacted if the job title for the position with the successor company differs from the job title noted in the predecessor company's labor certification? [Answer Finalized on 12/14/09]

A. When determining whether the job opportunity is the same as the job opportunity originally offered on the labor certification, adjudicators will examine the job duties of the position to determine if the job is still the same. Changes in job title, and other ancillary changes such as a change in computer software used in the job are not in and of themselves disallowed. Further, changes in the wage offered due to wage increases that have occurred over the passage of time do not impact the determination as to whether the job is the same.

Q #15. How can a successor employer request consolidated processing of SII cases as outlined in the SII memo? [Answer Finalized on 12/14/09]

A. A request for consolidated processing of SII cases should be directed to the National Customer Service Center (NCSC). The NCSC will forward the request to the appropriate service center(s) for a decision, which should be received within 30 days of the request. The center director(s) will determine if the consolidated processing request can be granted based upon whether such a request would adversely impact the service center's ability to timely address other pressing work priorities.

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